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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,610	03/20/2001	Julio Huato	3639-0101P	9560

30593 7590 06/13/2003

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EXAMINER

CHOI, FRANK I

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/13/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/811,610

Applicant(s)

HUATO ET AL.

Examiner

Frank I Choi

Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 5/13/2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 13 May 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

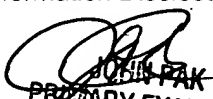
Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-17, 19, 21, 23-25.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
JOHN PAK  
PRIMARY EXAMINER  
GROUP 1600



Continuation of 2. NOTE. Applicant appears to indicate that soluble cupric compounds would not form colloidal compounds which raises a new issue relative to 35 USC 112, 2<sup>nd</sup> paragraph, as claims 1-17, 19, 21, 23-25 appear to include soluble copper compounds, such as copper citrate. Also the limitation "wherein the colloidal cupric compound does not fall out of the solution" appears to raise the issue of scope of enablement relative to 35 USC 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs, of claims 1-8, 17, 19, 21 as the Specification itself indicates that addition of organic solvents will cause the colloidal cupric compounds to precipitate. As such, it is uncertain what is meant by the term "solution" and, as such, it appears that one of ordinary skill in the art would be required to do undue experimentation in order to determine which compounds fall within the scope of the claims. Also, pursuant to 35 USC 112, 2<sup>nd</sup> paragraph, claims 1-8, 17, 19, 21 appear to lack antecedent basis in the specification for the phrase "fall out of the solution".

Continuation of 3. Applicant's reply has overcome the following rejection(s): 112, 2nd paragraph rejection over claims 1, 6-10, 14-17, 19, 21, 23-25 relative to purification. Applicant is correct in noting that the Advisory Action (4/1/2003) should have indicated that the Amendment After Final (3/13/2003) had overcome the rejection of claims 1-18, 23 over 35 USC 112, 1<sup>st</sup> paragraph and not 2<sup>nd</sup> paragraph, relative to the hydrocarbon and aromatic group limitations.

Continuation of 5. does NOT place the application in condition for allowance because: In the first instance, the affidavit is directed only to copper tartarate hydroxide, whereas the colloidal cupric compound can have both inorganic and organic anions. With respect to the 35 USC 112, 1st paragraph rejection over claims 1-17, 23, Examiner has duly considered Applicant's arguments but deems them unpersuasive. Attorney arguments do not constitute evidence and Applicant does not appear to have shown that one of ordinary skill would not be required to undue experimentation, in light of the fact, that claims broadly claim a colloidal copper compound in which the anion can be any inorganic or organic anion so long as a colloidal compound is formed, limited examples are provided and the prior art of record appears to indicate that not all copper salts will produce colloidal copper. Further, Applicant's arguments appear to support a conclusion that the scope of enablement is lacking even as to claims 19, 21, 24, 25. See NOTE above. Applicant does not appear to provide evidence for its conclusion that based on the Merck reference that one of ordinary skill in the art would conclude slightly soluble or insoluble cupric compounds may form colloidal cupric compounds (attorney arguments do not constitute evidence). Even if the same were true, Applicant claims are not limited to insoluble or slightly soluble cupric compounds. With respect to Applicant's response to the rejections over prior art, Examiner has duly considered Applicant's arguments but deems them unpersuasive. Applicant has argued that the colloidal copper of the present invention is different from conventional colloidal copper because the colloidal copper of the present invention does not fall out of solution and separate into a supernatant and cupric precipitate. However, Applicant has not shown that the prior art compositions disclosed in the rejections are different from the colloidal copper of the present invention. Examiner notes that in Applicant's arguments relative to enablement, the cupric compounds of the invention appear to include known cupric compounds as well as cupric compounds which according to Applicant would not form colloidal solutions (See Supplemental Amendment After Final (5/13/2003) pgs. 8-10). Applicant's affidavit only shows the attributes of copper tartarate hydroxide and no comparison is made between the known insoluble or slightly soluble cupric compounds and the same colloidal cupric compounds, or a comparison between colloidal cupric compounds which are prepared using the claimed purification process and colloidal cupric compounds which are prepared not using the claimed purification process. Further, Applicant's claims, except for claims 1-8, 17, 19, 21, do not appear contain any limitations which indicate that the copper colloid does not fall out of solution and separate into a supernatant and cupric precipitate. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 26 USPQ2d 1057 (Fed. Cir. 1993). Finally, applicant argues that lowered toxicity is unexpected, however, Example 10 only shows that colloidal copper citrate in the amounts used were not toxic to tomato plants not that lowered toxicity is unexpected. The Specification itself indicates that copper ions can be applied at concentrations which are non-toxic to the host plant Specification, paragraph 0012). Therefore, the rejections over the prior art are maintained.